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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NICHOLAS TELLES,)	NO. EDCV 11-00337-MAN
)	
Plaintiff,)	
)	MEMORANDUM OPINION
v.)	
)	AND ORDER
MICHAEL J. ASTRUE,)	
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff filed a Complaint on March 8, 2011, seeking review of the denial of plaintiff's application for a period of disability, disability insurance benefits ("DIB"), and supplemental security income ("SSI"). On April 5, 2011, the parties consented, pursuant to 28 U.S.C. § 636(c), to proceed before the undersigned United States Magistrate Judge. The parties filed a Joint Stipulation on November 7, 2011, in which: plaintiff seeks an order reversing the Commissioner's decision and remanding this case for the payment of benefits or, alternatively, for further administrative proceedings; and the Commissioner requests that his decision be affirmed or, alternatively, remanded for further administrative proceedings.

1 **SUMMARY OF ADMINISTRATIVE PROCEEDINGS**

2

3 On October 25, 2007, plaintiff filed an application for a period of
4 disability, DIB, and SSI. (Administrative Record ("A.R.") 8.)
5 Plaintiff, who was born on October 15, 1982 (A.R. 15),¹ claims to have
6 been disabled since November 1, 2005 (A.R. 8), due to schizophrenia,
7 schizoaffective disorder, depression, paranoia, anxiety, and panic
8 attacks. (A.R. 22-24, 52, 58).

9

10 After the Commissioner denied plaintiff's claim initially and upon
11 reconsideration (A.R. 8, 52-56, 58-63), plaintiff requested a hearing
12 (A.R. 8, 64). On October 14, 2009, plaintiff, who was represented by an
13 attorney, appeared and testified at a hearing before Administrative Law
14 Judge Joseph D. Schloss (the "ALJ"). (A.R. 8, 17-47.) Medical expert
15 David Glassmire and vocational expert David A. Rinehart also testified.
16 (*Id.*) On December 10, 2009, the ALJ denied plaintiff's claim (A.R. 8-
17 16), and the Appeals Council subsequently denied plaintiff's request for
18 review of the ALJ's decision (A.R. 1-3). That decision is now at issue
19 in this action.

20

21 **SUMMARY OF ADMINISTRATIVE DECISION**

22

23 The ALJ found that plaintiff met the insured status requirements of
24 the Social Security Act through March 31, 2008. (A.R. 10.) The ALJ
25 also found that plaintiff has not engaged in substantial gainful
26

27 ¹ On the alleged disability onset date, plaintiff was 23 years
28 old, which is defined as a younger individual. (*Id.*; citing 20 C.F.R.
§§ 404.1563, 416.963.)

1 activity since November 1, 2005, the alleged onset date of his
2 disability. (*Id.*) The ALJ determined that plaintiff has the severe
3 impairment of "schizophrenia/depression." (*Id.*) In so finding, the ALJ
4 also determined that plaintiff's substance abuse disorder is not severe
5 and has been in remission since 2007. (*Id.*) The ALJ found that
6 plaintiff does not have an impairment or combination of impairments that
7 meets or medically equals one of the listed impairments in 20 C.F.R.
8 Part 404, Subpart P, Appendix 1 (20 C.F.R. §§ 404.1520(d), 404.1525,
9 404.1526, 416.920(d), 416.925, 416.926). (A.R. 11.)

10
11 After reviewing the record, the ALJ determined that plaintiff has
12 the residual functional capacity ("RFC") to perform medium work as
13 defined in 20 C.F.R. §§ 404.1567(c) and 416.967(c). (A.R. 13.) The ALJ
14 noted that "[t]his [work] should be performed in a low stress
15 environment and involve simple repetitive tasks requiring little contact
16 with supervisors, coworkers or a team, [and] in an environment where
17 [plaintiff] is not responsible for the safety of others." (*Id.*)

18
19 The ALJ concluded that plaintiff is unable to perform his past
20 relevant work.² (A.R. 14.) However, based on his RFC assessment and
21 after having considered plaintiff's age, education,³ work experience, and
22 the testimony of the vocational expert, the ALJ found that jobs exist in
23 the national economy that plaintiff could perform, including "floor
24

25
26 ² In his decision, the ALJ noted that plaintiff has past
27 relevant work as an "electrical wiring assembler (recreational vehicle)"
28 and "auto body customizer." (A.R. 14.)

³ The ALJ found that plaintiff has at least a high school
education and is able to communicate in English. (A.R. 15.)

1 polisher," "stores laborer," and "kitchen helper." (A.R. 15.)
2 Accordingly, the ALJ concluded that plaintiff has not been under a
3 disability, as defined in the Social Security Act, from November 1,
4 2005, through the date of the ALJ's decision. (A.R. 16.)

5 6 STANDARD OF REVIEW

7
8 Under 42 U.S.C. § 405(g), this Court reviews the Commissioner's
9 decision to determine whether it is free from legal error and supported
10 by substantial evidence in the record as a whole. Orn v. Astrue, 495
11 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is "'such relevant
12 evidence as a reasonable mind might accept as adequate to support a
13 conclusion.'" *Id.* (citation omitted). The "evidence must be more than
14 a mere scintilla but not necessarily a preponderance." Connett v.
15 Barnhart, 340 F.3d 871, 873 (9th Cir. 2003). "While inferences from the
16 record can constitute substantial evidence, only those 'reasonably drawn
17 from the record' will suffice." Widmark v. Barnhart, 454 F.3d 1063,
18 1066 (9th Cir. 2006)(citation omitted).

19
20 Although this Court cannot substitute its discretion for that of
21 the Commissioner, the Court nonetheless must review the record as a
22 whole, "weighing both the evidence that supports and the evidence that
23 detracts from the [Commissioner's] conclusion." Desrosiers v. Sec'y of
24 Health and Hum. Servs., 846 F.2d 573, 576 (9th Cir. 1988); *see also*
25 Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985). "The ALJ is
26 responsible for determining credibility, resolving conflicts in medical
27 testimony, and for resolving ambiguities." Andrews v. Shalala, 53 F.3d
28 1035, 1039 (9th Cir. 1995).

1 The Court will uphold the Commissioner's decision when the evidence
 2 is susceptible to more than one rational interpretation. Burch v.
 3 Barnhart, 400 F.3d 676, 679 (9th Cir. 2005). However, the Court may
 4 review only the reasons stated by the ALJ in his decision "and may not
 5 affirm the ALJ on a ground upon which he did not rely." Orn, 495 F.3d
 6 at 630; see also Connett, 340 F.3d at 874. The Court will not reverse
 7 the Commissioner's decision if it is based on harmless error, which
 8 exists only when it is "clear from the record that an ALJ's error was
 9 'inconsequential to the ultimate nondisability determination.'" Robbins
 10 v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 2006) (quoting Stout v.
 11 Comm'r, 454 F.3d 1050, 1055 (9th Cir. 2006)); see also Burch, 400 F.3d
 12 at 679.

14 DISCUSSION

16 Plaintiff claims that the ALJ did not: (1) consider properly the
 17 opinion of his treating psychiatrist Maged M. Estafan, M.D.;
 18 (2) consider properly the opinion of psychiatrist David Aryanpur, M.D.;⁴
 19 (3) consider properly the opinion of consultative psychologist Kara
 20 Cross, Ph.D.; (4) assess properly plaintiff's RFC; and (5) pose a
 21 complete hypothetical to the vocational expert. (Joint Stipulation
 22 ("Joint Stip.") at 2-10, 18-23, 25-29, 31-36.)

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25 ///

27 ⁴ In discussing the ALJ's alleged error in considering properly
 28 the opinion of Dr. Estafan, plaintiff also claimed that the ALJ did not
 consider properly the opinion of Dr. Aryanpur. (A.R. 7-8.)

1 I. The ALJ Did Not Consider Properly The Medical Opinions Of
2 Drs. Estafan And Aryanpur and Should Revisit The Opinion
3 Of Dr. Cross On Remand.
4

5 It is the responsibility of the ALJ to analyze evidence and resolve
6 conflicts in medical testimony. Magallanes v. Bowen, 881 F.2d 747, 750
7 (9th Cir. 1989). In the hierarchy of physician opinions considered in
8 assessing a social security claim, "[g]enerally, a treating physician's
9 opinion carries more weight than an examining physician's, and an
10 examining physician's opinion carries more weight than a reviewing
11 physician's." Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir.
12 2001); 20 C.F.R. §§ 404.1527(d), 416.927(d).
13

14 The opinions of treating physicians are entitled to the greatest
15 weight, because the treating physician is hired to cure and has a better
16 opportunity to observe the claimant. Magallanes, 881 F.2d at 751. When
17 a treating physician's opinion is not contradicted by another physician,
18 it may be rejected only for "clear and convincing" reasons. Lester v.
19 Chater, 81 F.3d 821, 830 (9th Cir. 1995). When contradicted by another
20 doctor, a treating physician's opinion may only be rejected if the ALJ
21 provides "specific and legitimate" reasons supported by substantial
22 evidence in the record. *Id.*
23

24 A. Dr. Estafan
25

26 Plaintiff claims that the ALJ failed to consider properly, and give
27 specific and legitimate reasons for rejecting, the opinion of Maged M.
28 Estafan, M.D., plaintiff's treating psychiatrist.

1 In his decision, the ALJ specifically referenced Dr. Estafan's
2 January 23, 2009 Mental Work Capacity Evaluation and his June 9, 2009
3 Narrative Report. (A.R. 12.) The ALJ rejected Dr. Estafan's opinion,
4 set forth in his January 23, 2009 Mental Work Capacity Evaluation, that
5 plaintiff could not sustain work activity without frequent absences,
6 because it "[wa]s not supported by any objective evidence." (A.R. 14.)
7 In so finding, the ALJ noted that Dr. Estafan "rated [plaintiff] as
8 moderate in the majority of areas which does not equate with the degree
9 of limitation set forth by Dr. Estafan." (*Id.*)

10
11 In addition, the ALJ rejected Dr. Estafan's opinion that plaintiff
12 was "unable to adapt to new or stressful situations" and "could not
13 sustain . . . concentration or repetitive tasks for an extended period,"
14 because Dr. Estafan's treatment notes were "brief [and] conclusory" and
15 his findings "[we]re inconsistent with [plaintiff]'s longitudinal
16 clinical record at [Riverside County Department of Health] "
17 (A.R. 12.) The ALJ noted that:

18
19 Clinical notes of July 14, 2008, from the Riverside County
20 Department of Health state that [plaintiff] had been absent
21 from group therapy for two weeks due to his helping his
22 parents paint and repair their house Previously,
23 [plaintiff] was reported to travel to Las Vegas for a vacation
24 during June 2008

25
26 Clinical notes of May 8, 2009, from the Riverside County
27 Department state that [plaintiff] was sleeping well and doing
28 fine. [Plaintiff] was reported to enjoy working with his

1 brother detailing cars. His mood, affect,
2 attention/concentration, and speech were all described as
3 appropriate. [Plaintiff] had no hallucinations, delusions,
4 sleep problems, appetite problems or drug/alcohol use
5 Previously, on January 23, 2009, a progress note reported that
6 claimant was doing well with his prescribed medication and
7 experiencing no side effects As of September 9, 2008,
8 [plaintiff]'s levels of paranoia and anxiety were termed mild.
9 [Plaintiff] was reported to have had one hospitalization . . .
10 [in] 2005

11
12 (*Id.*; internal citations omitted.)

13
14 The ALJ's reason for rejecting Dr. Estafan's opinion regarding
15 plaintiff's inability to sustain work activity without frequent absences
16 is neither specific nor legitimate. As an initial matter, Dr. Estafan's
17 finding is supported by objective evidence -- to wit, his medical
18 findings and diagnoses as well as his multiple observations and
19 examinations of plaintiff throughout his medical treatment.⁵ Further,
20 while it is true, as the ALJ contends, that Dr. Estafan rated plaintiff
21 as having "moderate" limitations in the majority of work-related
22 activities, Dr. Estafan also found plaintiff to have "marked"

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24 ⁵ As noted in Huynh v. Astrue, 2010 U.S. Dist. LEXIS 99002, at
25 *20, 2010 WL 3749270, at *7 (C.D. Cal. Sept. 20, 2010)(citations
26 omitted), "[p]sychiatric impairments are not as amenable to
27 substantiation by objective laboratory testing as are physical
28 impairments. The diagnostic techniques necessarily will be less
tangible. Mental disorders cannot be 'ascertained and verified' like
physical ailments." Accordingly, "in the case of mental illness,
clinical and laboratory data may consist of 'the diagnoses and
observations of professional psychiatrists and psychologists.'" *Id.*
(citation omitted).

1 limitations, *inter alia*, in his ability to "perform activities within a
2 schedule, maintain regular attendance, and be punctual within customary
3 tolerances" as well as in his ability to "sustain an ordinary routine
4 without special supervision." (A.R. 398.) For purposes of the Mental
5 Work Capacity Evaluation, "marked" was defined as: "Serious limitations
6 in this area. The ability to function in this area is severely limited
7 but not precluded." (*Id.*) Accordingly, in view of these findings of
8 "marked" limitations -- findings that are supportive of Dr. Estafan's
9 opinion regarding plaintiff's absences -- the ALJ's reasoning is
10 unpersuasive.

11
12 The ALJ also rejects Dr. Estafan's opinion that plaintiff is unable
13 to adapt to new or stressful situations, sustain concentration, and
14 conduct repetitive tasks for an extended period, because Dr. Estafan's
15 treatment notes are "brief [and] conclusory" and "inconsistent with
16 [plaintiff]'s longitudinal clinical record" at the Riverside County
17 Department of Health. (A.R. 12.) An ALJ may discredit a treating
18 physician's opinion if it is conclusory, brief, and unsupported by the
19 record as a whole or by objective medical findings. Batson v. Comm'r of
20 SSA, 359 F.3d 1190, 1195 (9th Cir. 2004). Inasmuch as Dr. Estafan's
21 January 23, 2009 Mental Work Capacity Evaluation is a checkbox form and
22 his June 9, 2009 Narrative Report is a circle "[a]ll criteria that apply
23 to this case" form, the ALJ properly found these evaluation forms to be
24 brief and conclusory. However, contrary to the ALJ's conclusion, the
25 findings contained therein are not inconsistent with the longitudinal
26 records at the Riverside County Department of Health. While the ALJ
27 properly cited periods when Dr. Estafan and/or social workers at the
28 Riverside County Department of Health found plaintiff to be stable and

1 "doing fine," the ALJ appears to have ignored or failed to summarize
2 properly other treatment notes which reflect that plaintiff was
3 experiencing significant symptoms and/or limitations as a result of his
4 impairment.

5
6 For example, the ALJ failed to mention Dr. Estafan's January 2,
7 2007 treatment note in which he found plaintiff to have: an emotional
8 state that was euthymic, depressed, and restricted; paranoid delusions;
9 and visual and auditory perceptions/hallucinations. (A.R. 290.) In
10 addition, the ALJ made no reference Dr. Estafan's November 6, 2007
11 treatment note in which he found plaintiff to have bizarre thought
12 processes, paranoid delusions, and visual perceptions/hallucinations.
13 (A.R. 283.) Additionally, as properly noted by plaintiff, the ALJ did
14 not cite Dr. Estafan's April 9, 2008 Narrative Report -- a report that
15 largely mirrors his June 9, 2009 Narrative Report. In the April 9, 2008
16 Narrative Report, Dr. Estafan found plaintiff to have: paranoid thought
17 that influences his actions and/or behaviors; visual
18 hallucinations/delusions; impaired judgment; evidence of insomnia,
19 depression, anxiety, isolation, inappropriate affect, avolition, and
20 social withdrawal. (A.R. 331.) Further, Dr. Estafan found that
21 plaintiff did not show an ability to: "maintain a sustained level of
22 concentration"; "sustain repetitive tasks for an extended period"; or
23 "adapt to new or stressful situations." (*Id.*) Dr. Estafan also found
24 that plaintiff had an "anxious" attitude and needed assistance with
25 finances, and he characterized plaintiff's prognosis as "chronic."
26 (*Id.*) Lastly, while the ALJ noted that Dr. Estafan found plaintiff's
27 levels of anxiety and paranoia were "mild" in his September 9, 2008
28 treatment note, the ALJ did not mention the fact that Dr. Estafan found

1 that plaintiff was still experiencing auditory and visual
2 perceptions/hallucinations (A.R. 388) and that he was assessed with a
3 GAF score of 50-55 (A.R. 385).⁶

4
5 Accordingly, the evidence, when fairly viewed, appears to show that
6 plaintiff's condition is recurrent in nature. While at first blush Dr.
7 Estafan's findings seem to be inconsistent with some of the treatment
8 records, that inconsistency appears to be a result of the chronic and
9 recurrent nature of plaintiff's condition. As such, the ALJ's reasoning
10 cannot constitute a specific and legitimate reason for rejecting Dr.
11 Estafan's opinion.

12
13 2. Dr. Aryanpur

14
15 Plaintiff also claims that the ALJ did not consider properly the
16 opinion of examining psychiatrist David Aryanpur, M.D.

17
18 The ALJ rejected Dr. Aryanpur's opinion that plaintiff "suffered a
19 moderate to serious level of mental functional impairment," because Dr.
20 Aryanpur's opinion "was not supported by his report of objective
21 findings." (A.R. 13.) Specifically, the ALJ noted Dr. Aryanpur's

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23 ⁶ The GAF scale "[c]onsider[s] psychological, social, and
24 occupational functioning on a hypothetical continuum of mental health-
25 illness." *Diagnostic and Statistical Manual of Mental Disorders*, DSM-
26 IV-TR, 34 (rev. 4th ed. 2000). A rating of 41-50 reflects "[s]erious
27 symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent
28 shoplifting) OR any serious impairment in social, occupational, or
school functioning (e.g., no friends, unable to keep a job)." *Id.* A
rating of 51-60 reflects "[m]oderate symptoms (e.g., flat affect and
circumstantial speech, occasional panic attacks) OR moderate difficulty
in social, occupational, or school functioning (e.g., few friends,
conflicts with peers or co-workers)." *Id.*

1 findings that: "[plaintiff] was found fully oriented with his
2 intellectual functions, including memory and concentration, remaining
3 intact"; (2) "[plaintiff] was reported to experience no hallucinations";
4 and (3) "[plaintiff's] thought process was termed normal and goal
5 directed." (*Id.*; internal citations omitted.)

6
7 However, the ALJ did not summarize Dr. Aryanpur's report fairly.
8 For example, the ALJ failed to address Dr. Aryanpur's findings that
9 plaintiff has delusions (A.R. 403) and that his thought content, as
10 opposed to his thought process, includes, "ideas of reference,"
11 "broadcasting," and "insertion" (A.R. 406). In addition, the ALJ made
12 no mention of Dr. Aryanpur's finding that plaintiff had psychomotor
13 slowing and blunted affect. (A.R. 405.) In sum, it appears that the
14 ALJ attempted to discredit Dr. Aryanpur's opinion by improperly
15 summarizing and/or ignoring competent evidence in his report. As such,
16 the ALJ did not provide a specific and legitimate reason for
17 discrediting Dr. Aryanpur's opinion.

18
19 3. Dr. Cross

20
21 Plaintiff also claims that the ALJ did not consider properly the
22 opinion of consulting clinical psychologist Kara Cross, Ph.D.

23
24 On February 25, 2008, at the request of the Department of Social
25 Services, Disability Determination Service, Dr. Cross performed a
26 psychological evaluation of plaintiff. (A.R. 301-06.) In her clinical
27 observations, Dr. Cross noted that plaintiff arrived on time and was a
28 "neat and clean, well-groomed, personable young man[,]" who "was

1 cooperative and put forth his best effort." (A.R. 301.) Dr. Cross
2 observed, *inter alia*, that plaintiff had: a flat mood and somewhat flat
3 affect; unimpaired gross and fine muscle skills; no active delusions or
4 perservations; no speech, hearing, or vision impairments; and adequate
5 attention and concentration. (*Id.*)

6
7 During the evaluation, plaintiff reported to Dr. Cross that he had
8 "a history of auditory and visual hallucinations and ha[d] been
9 diagnosed with schizophreniform." (A.R. 301.) Additionally, plaintiff
10 reported that "he developed panic attacks and some social fears and
11 social withdrawal." (*Id.*) Plaintiff stated that he stopped working due
12 to fear, and because he "ha[d] difficulty completing tasks," and c[ould
13 not] take the stress of taking orders." (A.R. 302.)

14
15 Based on her examination, as well as the results of plaintiff's
16 performance on various mental status examinations, Dr. Cross diagnosed
17 plaintiff with schizophrenia and assessed plaintiff with a GAF score of
18 50. (A.R. 302-05.) Dr. Cross opined that plaintiff "would have
19 difficulty maintaining employment for a 40-hour workweek 8-hour
20 workday." (A.R. 305.) Dr. Cross opined, however, that plaintiff "would
21 be able to handle a part-time work basis in a low stress, repetitive
22 task work setting." (*Id.*) In so finding, Dr. Cross noted that
23 plaintiff can understand and carry out simple tasks, but he has a blunt
24 affect, poor social skills, and does not relate well to others. (A.R.
25 306.)

26
27 The ALJ rejected Dr. Cross's opinion that plaintiff's mental
28 impairment restricts him from working on a full-time basis, because:

1 (1) Dr. Cross opined that plaintiff was only "moderately limited" with
2 medication compliance; (2) "[plaintiff]'s limitation to a part[-]time
3 position is a determination left to the Commissioner"; and (3) Dr. Cross
4 did not have access to plaintiff's clinical records and did not cite any
5 objective basis for her opinion. (A.R. 11.)

6
7 The ALJ's first reason for rejecting Dr. Cross's opinion is not
8 specific and legitimate. In summarizing Dr. Cross's opinion and
9 findings, the ALJ noted that Dr. Cross found plaintiff to be "moderately
10 functional" when taking his medication. (A.R. 11.) The ALJ further
11 noted that "[t]he term moderate, as used for [Dr. Cross's] evaluation,
12 is defined as more than a slight limitation with the individual still
13 able to function well." *Id.* However, the ALJ's interpretation of the
14 term "moderate" is contained nowhere in Dr. Cross's evaluation.
15 Further, his suggestion that plaintiff would still be able to "function
16 well" is belied by Dr. Cross's statement, *in the very next two*
17 *sentences*, that "[a] full-time position . . . would . . . [place] a
18 tremendous amount of stress on [plaintiff] and he might deteriorate. A
19 part-time position would work much better for [plaintiff]." (A.R. 306.)
20 Accordingly, to the extent the ALJ rejects Dr. Cross's opinion because
21 plaintiff can still "function well" when taking his medication, the
22 ALJ's reasoning is unpersuasive.

23
24 The ALJ's second reason for rejecting Dr. Cross's opinion -- to
25 wit, that "[plaintiff]'s limitation to a part-time position is a
26 determination left to the Commissioner" -- is unavailing. Although a
27 medical source statement on an issue reserved to the Commissioner, such
28 as the determination of a claimant's ultimate disability, is not

1 determinative or entitled to special weight, the Commissioner is not
2 free to disregard this information. Social Security Ruling ("SSR") 96-
3 8p, 1996 SSR LEXIS 5, at *21 n.8. Instead, the ALJ is instructed to
4 consider such opinions in adjudicating a disability claim. *Id.* Here,
5 not only did Dr. Cross opine that plaintiff would be better suited for
6 part-time work, but also in so finding, Dr. Cross opined that, because
7 of plaintiff's mental impairment, a full-time position would place a
8 tremendous amount of stress on plaintiff, which might cause him to
9 deteriorate. (A.R. 306.) Rather than affording weight to Dr. Cross's
10 opinion regarding plaintiff's limitations related to full-time work, the
11 ALJ rejected it outright on the ground that Dr. Cross also rendered a
12 non-dispositive opinion regarding ultimate disability. While this may
13 constitute a specific reason for rejecting Dr. Cross's opinion, it is
14 not a legitimate one.

15
16 Lastly, the ALJ rejected Dr. Cross's opinion that plaintiff could
17 not sustain a full-time position, because Dr. Cross did not have access
18 to plaintiff's clinical records and did not cite any objective basis for
19 her finding. As an initial matter, Dr. Cross should have been provided
20 with plaintiff's clinical records. 20 C.F.R. §§ 404.1517, 416.917 ("If
21 we arrange for [a consultative examination or test, . . . [we] will also
22 give the examiner any necessary background information about your
23 condition.") However, despite the failure to provide Dr. Cross with the
24 requisite and necessary background information, and contrary to the
25 ALJ's finding, Dr. Cross's opinion regarding plaintiff's inability to
26 sustain full-time work was based on objective evidence -- to wit, her
27 observations of plaintiff as well as plaintiff's performance on various
28 modes of psychiatric evaluation.

1 Nonetheless, the fact that Dr. Cross was not provided with
2 plaintiff's clinical records and, thus, may not have had a sufficiently
3 complete picture of plaintiff's condition, may constitute a specific and
4 legitimate reason for rejecting her opinion. However, the Court need
5 not reach this issue, because this case is being remanded for the
6 reasons stated *supra*. Accordingly, on remand, the ALJ, if appropriate,
7 should provide Dr. Cross with plaintiff's records so that she can render
8 an opinion based upon a *complete* review of the medical record.

9
10 **II. The ALJ Must Review And Reconsider Plaintiff's RFC And**
11 **Plaintiff's Ability to Perform "Other Work."**

12
13 Based on the foregoing, there are several matters that the ALJ
14 needs to review and reconsider on remand. As a result, the ALJ's
15 conclusion regarding plaintiff's RFC and plaintiff's ability to do other
16 work may change. Therefore, the Court does not reach plaintiff's fourth
17 and fifth claims, *to wit*, that the ALJ erred in determining plaintiff's
18 RFC and failed to pose a complete hypothetical to the vocational expert.
19 To properly review and reconsider these issues, the ALJ needs to
20 reconsider the above-noted medical opinions. Further, to the extent
21 that plaintiff's RFC is reassessed, additional testimony from a
22 vocational expert likely will be required to determine what work, if
23 any, plaintiff can perform.

24
25 **III. Remand Is Required.**

26
27 The decision whether to remand for further proceedings or order an
28 immediate award of benefits is within the district court's discretion.

1 Harman v. Apfel, 211 F.3d 1172, 1175-78 (9th Cir. 2000). Where no
2 useful purpose would be served by further administrative proceedings, or
3 where the record has been fully developed, it is appropriate to exercise
4 this discretion to direct an immediate award of benefits. *Id.* at 1179
5 ("[T]he decision of whether to remand for further proceedings turns upon
6 the likely utility of such proceedings."). However, where there are
7 outstanding issues that must be resolved before a determination of
8 disability can be made, and it is not clear from the record that the ALJ
9 would be required to find the claimant disabled if all the evidence were
10 properly evaluated, remand is appropriate. *Id.* at 1179-81.

11
12 Remand is the appropriate remedy to allow the ALJ the opportunity
13 to remedy the above-mentioned deficiencies and errors. *See, e.g.,*
14 Taylor v. Comm'r of Soc. Sec. Admin., 659 F.3d 1228, 1233 (9th Cir.
15 2011)(remanding for consideration of psychiatric opinion); Lay v.
16 Astrue, 373 Fed. Appx. 804, 806 (9th Cir. April 5, 2010)(remanding for
17 consideration of additional medical opinions that lent support for
18 another physician's opinion); Stillwater v. Comm'r of Soc. Sec. Admin.,
19 361 Fed. Appx. 809, 812 (9th Cir. Jan. 7, 2010)(remand for
20 reconsideration of State agency physicians' opinions that were
21 discredited because they were based on a treating physician's opinion
22 that the ALJ rejected improperly). On remand, the ALJ must correct the
23 above-mentioned deficiencies and errors.

24 25 CONCLUSION

26
27 Accordingly, for the reasons stated above, IT IS ORDERED that the
28 decision of the Commissioner is REVERSED, and this case is REMANDED for

1 further proceedings consistent with this Memorandum Opinion and Order.

2
3 IT IS FURTHER ORDERED that the Clerk of the Court shall serve
4 copies of this Memorandum Opinion and Order and the Judgment on counsel
5 for plaintiff and for defendant.

6
7 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

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9 DATED: July 19, 2012

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11 MARGARET A. NAGLE
12 UNITED STATES MAGISTRATE JUDGE
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